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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,078	05/31/2001	Thomas D. Taggart	STEU-3250	9319

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EXAMINER

TAWFIK, SAMEH

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 05/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

2e

**Office Action Summary**

Application No.

09/871,078

Applicant(s)

TAGGART, THOMAS D.

Examiner

Sameh H. Tawfik

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20 and 22-62 is/are pending in the application.
- 4a) Of the above claim(s) 23-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20, 22 and 35-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20, 22, 35-55, and 57-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gies (4,862,933) in view of Olsson (5,799,464).<sup>042</sup>

Gies discloses a method and apparatus for aseptically packaging aseptically sterilized foodstuffs comprising the means for providing a plurality of containers (cups 15); aseptically disinfecting the plurality of containers (apparatus 19) see for example (column 4, lines 18-23); aseptically filling the aseptically disinfected plurality of containers with the foodstuffs (apparatus 20) see for example (column 4, lines 23-25); and aseptically disinfected plurality of containers at a rate greater than 100 container per minute (column 4, lines 35 and 36) the machine can be operated to produce 33,600 packages per hour which is equal to 560 packages per minute. Gies does not disclose the container is bottle made of plastic or glass. However, Olsson discloses containers made of glass or plastic bottles was filled with product from a filling machine (column 3, lines 38-45).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies's method and apparatus for aseptically packaging aseptically sterilized foodstuffs by having containers made of glass or plastic bottles, as suggested by Olsson and because it has been held to be within the general skill of a worker in the

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art to select a known material on the basis of its suitability for the intended use as a matter of  
obvious design choice. *In re Leshin*, 125 USPQ 416;.

Regarding claims 46 and 61: Gies does not disclose specifically the level of disinfecting  
the containers to at least 6 log reduction in spore organisms. However, it would have been  
obvious to one having ordinary skill in the art at the time the invention was made to have  
modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by having the  
level of disinfecting the containers to at least 6 log reduction in spore organisms, since it has  
been held that discovering an optimum value of a result effective variable involves only routine  
skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 37 and 51: the reference of the prior art discloses the claimed invention  
except for the plastic is high density polyethylene. However, it would have been obvious to one  
having ordinary skill in the art at the time the invention was made to have modified Gies's  
method for aseptically packaging aseptically sterilized foodstuffs by having plastic with high  
density polyethylene, since it has been held to be within the general skill of a worker in the art to  
select a known material on the basis of its suitability for the intended use as a matter of obvious  
design choice. *In re Leshin; supra*.

Regarding claim 39: Gies discloses capping the container with aseptically disinfected lid  
(device 21) see for example (column 1, lines 37-39).

Regarding claim 40: Gies discloses disinfecting the interior of the plurality of containers  
with a hydrogen peroxide (column 1, lines 26-29).

Regarding claims 41, 43, 52, 53, and 57: Gies discloses disinfecting the interior of the  
plurality of the plurality of container includes the application of the hydrogen peroxide spray and

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the activation and removal of the hydrogen peroxide using a sterilized air (column 1, lines 56-68 and column 2, lines 1 and 2). Gies does not disclose the range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by having range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claims 42 and 54: Gies discloses a feedback control system (controller 60) for maintaining aseptic container conditions.

Regarding claims 45, 47, 60, and 62: Gies does not disclose specifically the exact level of the sterilization of the foodstuffs to at least 12 log reduction in clostridium botulinum nor the residual level of hydrogen peroxide is less than .5ppm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by having the level of the sterilization of the foodstuffs to at least 12 log reduction in clostridium botulinum and the residual level of hydrogen peroxide is less than .5ppm, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of B. Poole (2,491,015).

Gies and Olsson failed to disclose that disinfecting the container from the outside surfaces. However, Poole discloses method of sterilizing food containers (39) from outside (Fig. 4) the food containers (39) fed into a sterilizing fluid tank (1), see for example (column 1, lines 51-55) to sterilize all the parts of the container (column 1, lines 22 and 23).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by disinfecting the container from the outside surfaces, as suggested by Poole, in order to sterilize all the parts of the container.

### ***Response to Arguments***

Applicant's arguments filed on 4/16/2002 have been fully considered but they are not persuasive.

Applicant argue in page 6 of the argument that Gies's reference does not teach aseptic operation, only teaches pre-sterilization of containers. The examiner believes that Gies as modified by involving of routine skill in the art will be able to sterilize the food product to a level at least 12 log and the container to a level at least 6 log as the applicant claimed, that will be considered as aseptic.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2809. The examiner can normally be reached on Monday - Friday from 8:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rada, Rinaldi can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ST.  
May 16, 2002



**EUGENE KIM**  
**PRIMARY EXAMINER**